

6306

Bonanza
P.D. # 2

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-191230

DATE: May 9, 1978

MATTER OF: Pan Am Construction & Management Co.

DIGEST:

1. Allegation that low proposal was late is not demonstrated by evidence that low offeror's representative did not sign building log prior to time for receipt of proposal, where building security guard states that people with whom she is familiar, like low offeror's representative, are not required to sign building log and where guard also states that low offeror's representative was admitted to building prior to time for receipt of proposals.
2. Protester's claim, that only time-date stamp or other documentary evidence maintained by installation can be used to show timely receipt of proposal, is without merit because relied-upon standard applies to mailed and telegraphic bids or proposals, not to hand-carried proposals as in instant case.
3. Statements of Government personnel as to time of receipt of low proposal are competent evidence of that fact.

Pan Am Construction & Management Co. (Pan Am) protests award of a contract by the D. C. Department of Housing and Community Development (D. C.) for the renovation of Deanwood Gardens, D. C. Project 1-42, on the ground that the low offeror and awardee, Congressional General Contractors (Congressional) did not submit a timely proposal.

The solicitation under which offers were received, Specification No. 42-77-1, specified that proposals must be submitted by 10:00 a.m. on January 16,

1978. Mayor's Order 78-9 made January 16, 1978 a D. C. holiday in commemoration of the birthday of Martin Luther King, Jr. Consequently, proposals were received the following day January 17, 1978 until 10:00 a.m. D. C. contends that three cost proposals were received prior to that time in the following amounts:

1. Congressional General Contractors \$1,475,000.00
2. Pan Am Construction & Management Co. 1,660,000.00
3. P. W. Parker Co., Inc. 2,067,321.00

Award was made to Congressional on February 3, 1978. On that same date, Pan Am filed a protest in our Office contending that Congressional's proposal was not received prior to the 10:00 a.m. closing time for receipt of proposals.

As evidence of timely receipt of Congressional's proposal, D. C. has submitted five affidavits. In pertinent part, these may be described as follows:

A security guard on duty at the building where proposals were received has sworn that, prior to 10:00 a.m. on January 17, 1978, she admitted Congressional's president to enter the building for the purpose of submitting a bid. The guard states that as she recognized this individual, he was not required to sign the building register (log) before being admitted.

Mr. Lewis, contract engineer for the National Capital Housing Authority, has sworn that Pan Am's proposal was hand-delivered to him at 9:15 on January 17, 1978, that he received Congressional's at 9:30 a.m., and that these and the proposal of P. W. Parker were delivered to the procurement officer at 9:45 a.m.

The above-mentioned procurement officer has sworn that three proposals were delivered to her office by Mr. Lewis at approximately 9:45 a.m. on January 17, 1978 and that these were turned over to the contracting officer, Mr. Montgomery.

Mr. Montgomery has sworn that, at approximately 9:50 a.m. on January 17, 1978, he received three sealed proposals from Mr. Lewis and that these contained the proposals of Pan Am, Congressional, and P. W. Parker.

The President of Congressional has sworn that he handed his company's proposal to Mr. Lewis at approximately 9:30 a.m. on January 17, 1978.

Pan Am places great importance on the affidavit of the gentlemen who submitted its proposal on January 17, 1978, Mr. John Lynham. In pertinent part, his affidavit states:

"* * * I arrived at 1170 12th Street, N. W., at 9:15 a.m. and signed the building register. I reviewed the register of those individuals who had entered the building on that date and saw no evidence of that any competitor had visited the building prior to 9:15 a.m. on January 17, 1978.

"7. After signing the register, I promptly went to Room 114. Personnel on duty in Room 114 had no idea that proposals were to be received on that date. I immediately went to Room 200, the Office of Mr. Robert Lewis, Contracting Officer for the subject project.

"8. As soon as I got off the elevator on the Second Floor, I saw Mr. Lewis, who was on his way to a meeting with Mr. Montgomery, in fact, we rode back down the elevator together to the first floor. We discussed receipt of proposals on the project. When we reached the first floor, a representative of another bidder, P. W. Parker, Inc., was waiting for an elevator. Upon seeing Mr. Lewis, Parker's man turned in his proposal to Mr. Lewis, just as I had done while in the elevator with Mr. Lewis. Parker's representative and Mr. Lewis then began discussing another project on which Parker was already working. As I excused myself, Parker's representative [and] Mr. Lewis entered Room 114. I immediately left the building and signed out at 10:00 a.m. I once again checked the building register and found the name of no other competitor's representatives other than that of P. W. Parker's.

The protester states:

"As can be seen in the enclosed affidavit [quoted above], the only other bidder of which Pan Am was aware who submitted a timely proposal was the P. W. Parker Company, in that Pan Am's contemporaneous review of the sign-in log at the building indicated to it that in fact no representative of Congressional had delivered a proposal prior to 10:00 a.m. on January 17, 1978."

As the security guard has stated that Congressional's representative was familiar to her and that only those unfamiliar to her were required to sign the log, the absence of a signature by a representative of Congressional is not conclusive here.

Pan Am also states:

"Mr. Lewis states he received Congressional's bid after receipt of Pan Am's bid. As both Mr. Lynham's and Mr. Lewis' affidavits state, Mr. Lewis was either in Lynham's presence or Ralph George's sight (the representative of P. W. Parker) until the proposals were handed in. At no time could Mr. Lewis have received Pan Am's bid without either Mr. Lynham or Mr. George witnessing Mr. Kittrell handing Mr. Lewis Congressional's bid. Neither person saw Mr. Kittrell hand Mr. Lewis a bid. Mr. George signed out at 10:06 a.m. without ever seeing Mr. Kittrell before 10:00 a.m.

The record in this case is devoid of any evidence to indicate what Mr. George saw. Consequently, we have no basis for knowing whether he did or did not witness the submission of Congressional's proposal. As to what Mr. Lynham would have seen prior to encountering Mr. George, we note that, according to Mr. Lynham's affidavit, at least 35 minutes elapsed from the time he signed in at 9:05 a.m. until he encountered Mr. George sometime shortly after 9:50 a.m. During this time, Mr. Lynham states that after signing the register, he "promptly" went to Room 114 from which he "immediately" proceeded by elevator to the second floor, where, "as soon as [he] got off the elevator" he met Mr. Lewis. Mr. Lynham states that he got back in the elevator and returned to the first floor with Mr. Lewis, during which time he handed Pan Am's proposal to Mr. Lewis. When they reached the first floor, they encountered Mr. George who, apparently, had just signed in at 9:50 a.m. We are not persuaded that a brief visit to Room 114 and two one-story elevator rides adequately accounts for the full 35 minutes during which Pan Am contends its representative would have witnessed the submission of a proposal by Congressional. Consequently, we cannot accept the contention that "at no time could Mr. Lewis have received a bid from Congressional without either Mr. Lynham or Mr. George witnessing Mr. Kittrell handing Mr. Lewis Congressional's bid."

Pan Am points out that the security guard's statement that Mr. Kittrell entered the building before 10:00 a.m. does not establish that he actually submitted Congressional's proposal prior to 10:00 a.m. The protester also argues that all three proposals could not have been handed to the procurement officer at 9:45 as alleged by D. C. because P. W. Parker's representative, Mr. George did not sign the building log until 9:50. As to the first point, D. C. does not rely on the guard's statement, but rather the other four affidavits, to show timely receipt; as to the second point, we note that the procurement officer's affidavit refers to "approximately 9:45 a.m." and we think this minor point is of little importance. Consequently, Pan Am has failed to show that the proposal submitted by Congressional was received after 10:00 a.m.

Pan Am argues that even if it has failed to show late receipt, D. C. has not showed, by competent evidence, that the Congressional proposal was received on time. In this regard, Pan Am relies on American Electronic Laboratories, Inc., B-189357, 77-2 CPD 323, in which we denied a protester's claim of timely proposal submission where there was no independent (i.e., other than self-serving) evidence that the proposal was timely received by the Government. Pan Am cites portions of paragraph 1 of Article 15(2) of "Standard Contract Provisions," applicable to D. C. Construction Projects, and Federal Procurement Regulations (FPR) § 1-2.201(a)(31) to show that the only acceptable evidence of timely receipt is a time-date stamp or other documentary evidence maintained by the installation. Pan Am concludes that, as to Congressional's proposal, there is neither independent evidence of timely receipt as required by American Electronic Laboratories, supra, nor a time-date stamp as allegedly required by the specifications and FPR.

When read in context, it is clear that neither the specifications, the FPR, nor decisions of our Office require that timely receipt of hand-carried bids or proposals be proved by a time-date stamp or other documentary evidence maintained by the Government installation. The first paragraph of Article 15(2) of the "Standard Contract Provisions" states that late bids will not be considered unless:

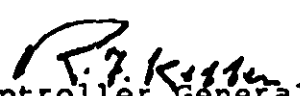
"if submitted by mail (or by telegram if authorized by the Contracting Officer), it is determined by the District that the late receipt was due solely to mishandling by the District after receipt at the District agency: Provided that timely receipt at such agency is established upon examination of an appropriate date or time stamp or other documentary evidence of receipt within the control of such agency." (Emphasis added.)

We think it is clear that the relied upon evidentiary standard is applicable to mailed or, when authorized, telegraphic bids. In American Electronic Laboratories, supra, we specifically rejected the argument that the evidentiary standard of ASPR § 7-2002.2(c)(ii) (which is identical to that of FPR § 1-2.201(a)(31)) applied to hand-carried proposals and stated:

"We shall consider all relevant evidence in determining whether AEL's hand-carried proposal was received by the Government prior to 2:00 p.m. on June 3." (Emphasis added.)

Finally, Pan Am apparently believes that the sworn statements by the three D. C. employees associated with this procurement are to be compared with the affidavits submitted by the rejected offeror's employee in American Electronic Laboratories. We have accepted statements of Government personnel as probative of the events in question. S. Puma and Company, Inc., B-182936, April 17, 1975, 75-1 CPD 230; 40 Comp. Gen. 469 (1961). Furthermore, we do not agree that the corroborated testimony of Government officials is less "independent" than the evidence supplied by a Government-maintained time-date stamp. Under the circumstances, we conclude that D. C. has introduced competent evidence of timely receipt of Congressional's proposal.

The protest of Pan Am is, therefore, denied.


Deputy Comptroller General
of the United States